

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIM J HARDAWAY
Claimant

APPEAL 21A-DUA-00956-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/05/20
Claimant: Appellant (6)

Iowa Code § 96.6(2) – Timely Appeal
PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Tim J Hardaway, the claimant/ appellant, filed an appeal from the December 7, 2020 unemployment insurance decision that denied Pandemic Unemployment Assistance (PUA) benefits. Iowa Workforce Development mailed a notice of hearing to Mr. Hardaway's last address of record. The hearing was scheduled for April 13, 2021, at 4:00 p.m. Mr. Hardaway did not provide a telephone number to the Appeals Bureau prior to the scheduled hearing. No hearing was held.

ISSUE:

Should Mr. Hardaway's appeal be dismissed based on him not appearing and participating?

FINDINGS OF FACT:

Iowa Workforce Development notified Mr. Hardaway of the hearing. He did not respond to the hearing notice or otherwise provide a telephone number to the Appeals Bureau. He did not participate in the hearing or request a postponement. Mr. Hardaway did not follow the instructions on the hearing notice. Official notice is taken of the hearing control screen to establish that Mr. Hardaway did not provide a telephone number to the Appeals Bureau prior to the time of the scheduled hearing.

The hearing notice instruction specifically advises Mr. Hardaway of the date and time of the hearing. It also states:

IMPORTANT NOTICE!

YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU
AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will
not call you for the hearing. You must also provide the name(s) and phone
number(s) of any witnesses to the Appeals Bureau.

The back page of the hearing notice provides further instruction and warning:

Failure to Participate or Register for Appeal Hearing

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence. The Appeals Bureau does not have a phone number for this hearing unless you provide it to us by following the instructions on the other side of this page. If you do not follow those instructions, the judge will not call you for the hearing. 871 IAC 26.14(7).

The information quoted above also appears on the hearing notice in Spanish.

As a courtesy to Mr. Hardaway, the administrative law judge left the record open for 15 minutes past the scheduled time of the hearing to give him a reasonable amount of time to call the Appeals Bureau to participate. Mr. Hardaway did not contact the Appeals Bureau or otherwise register for the hearing during that time period.

The unemployment insurance decision denied Mr. Hardaway's application for PUA benefits. Mr. Hardaway's appeal letter did not provide enough information to issue a decision without a hearing.

REASONING AND CONCLUSIONS OF LAW:

Section 2102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides for unemployment benefit assistance to any covered individual, as defined by the Act, for up to 39 weeks, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19. Under Section 2102(h) of the CARES Act, 20 C.F.R Part 625 applies to the administration of the PUA program.

The United States Department of Labor's Unemployment Insurance Program Letter No. 16-20, provides:

Consistent with 20 C.F.R 625.11, the terms and conditions of the state law of the applicable state for an individual which apply to claims for, and the payment of, regular compensation apply to the payment of PUA to individuals. The provisions of the applicable state law that apply to claims for PUA include, but are not limited to:

...

- Determinations, redeterminations, appeals, and hearings;

....

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party.

Iowa Admin. Code r. 871-26.14(7) provides, in relevant part:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the

hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provide in Iowa Code section 17A.12(3).

In this case, Mr. Hardaway did not provide a telephone number to the Appeals Bureau prior to the scheduled hearing. Mr. Hardaway is in default and the appeal is dismissed.

If Mr. Hardaway disagrees with this decision, he may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The December 7, 2020 unemployment insurance decision denying PUA benefits remains in effect as Mr. Hardaway is in default.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 16, 2021
Decision Dated and Mailed

dz/kmj